

[Service Date February 24, 2016]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

BREMERTON-KITSAP AIRPORTER,
INC.

in the amount of \$2,900

DOCKET TE-152319

ORDER 01

ORDER DENYING CONTEST OF
VIOLATIONS; DENYING
MITIGATION

BACKGROUND

- 1 On December 24, 2015, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,900 (Penalty Assessment) against Bremerton-Kitsap Airporter, Inc. (Bremerton-Kitsap or Company) for 29 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications and hours of service.
- 2 On January 7, 2016, Bremerton-Kitsap responded to the Penalty Assessment contesting the violations and requesting mitigation of the penalty based on the written information provided. The Company conceded that a single violation occurred when Commission staff (Staff) discovered that a Company employee, Mike Resor, was driving without a valid medical certificate, but disputes the Commission's decision to cite separate violations for each day Mr. Resor drove without a certificate. The Company also explained that some of its record keeping functions were overlooked due to the death of two family members, who were also employees, in the last two years.
- 3 On January 21, 2016, Staff filed a response recommending the Commission deny the Company's request for mitigation. Staff explains that when a driver operates a vehicle 29 separate times without a valid medical certificate, the operating company has committed 29 separate violations under the applicable laws and rules. Accordingly, assessing penalties for each of the 29 instances where Mr. Resor drove without a medical certificate is consistent with extensive Commission precedent. Staff also notes that it is not aware of the personal tragedies affecting Bremerton-Kitsap's management or employees, and thus cannot comment on how those events have impacted the Company's ability to keep accurate records, or whether those events warrant mitigation of the penalty.

DISCUSSION AND DECISION

- 4 Washington law requires passenger transportation companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³
- 5 As a preliminary matter, we deny the Company’s contest of the violations. The undisputed facts demonstrate that between June and November 2015, Mr. Resor drove on 29 days without a valid medical certificate. Bremerton-Kitsap argues that, despite the fact that Mr. Resor drove on 29 separate occasions, only one violation occurred. As Staff correctly notes in its response, however, each and every violation of Commission laws or rules is a separate and distinct offense, and the Commission consistently assesses penalties for individual violations of rules that are critical to safe operations. Accordingly, we find that the Company committed 29 separate violations of 49 C.F.R. Part 391.45(b)(1), and turn now to the issue of mitigation.
- 6 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.⁴
- 7 In its application for mitigation, Bremerton-Kitsap introduces new information about the death of two family member-employees in the last two years, which the Company claims affected its record keeping functions. Due to the Company’s recent history of noncompliance, we are unwilling to reduce or waive the penalty.

¹ See RCW 80.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶19.

8 On June 10, 2015, the Commission issued a \$1,000 penalty against Bremerton-Kitsap in Docket TE-150531 for two critical violations of 49 C.F.R. Part 382.301(a), using a driver prior to the driver receiving a negative pre-employment controlled substance and alcohol use test result. The Company filed an application for mitigation on June 15, 2015. On June 30, 2015, the Commission issued Order 01, upholding the penalty assessment. Bremerton-Kitsap subsequently filed a petition for administrative review, and, on August 5, 2015, the Commission issued Final Order 02, upholding Order 01 and requiring payment of the \$1,000 penalty by August 17, 2015. Bremerton-Kitsap did not seek judicial review of Order 02, and, to date, has not paid the \$1,000 penalty. In multiple follow-up letters to the Commission, the Company has clearly expressed its intent to disregard the penalty.

9 On balance, the Company's recent history of critical violations and refusal to comply with a Commission final order outweigh any mitigating effect the new information might otherwise have. Moreover, the Company failed to establish any causal link between its compromised record keeping functions and the violations at issue here. Accordingly, we find a \$100 per violation penalty appropriate for violations of 49 C.F.R. Part 391.45(b)(1), and deny the Company's request for mitigation.

ORDER

THE COMMISSION ORDERS:

- 10 (1) Bremerton-Kitsap Airporter, Inc.'s request for mitigation of the \$2,900 penalty is DENIED.
- 11 (2) The penalty is due and payable no later than March 9, 2016.
- 12 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective February 24, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.